

CHAPTER 7

LOAN BROKERS

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7-7-1. Definitions.

As used in this chapter, the term:

(1) "Advance fee" means any consideration which is assessed or collected, prior to the closing of a loan, by a loan broker.

(2) "Borrower" means a person obtaining or desiring to obtain a loan of money, a credit card, or a line of credit.

(3) "Loan broker" means any person, firm, or corporation who does not operate or maintain an office that is open regularly to the public for the transaction of business and where potential borrowers actually visit to transact, discuss, or negotiate potential loans and:

(A) For or in expectation of consideration, arranges or attempts to arrange or offers to fund a loan of money, a credit card, or a line of credit;

(B) For or in expectation of consideration, assists or advises a borrower in obtaining or attempting to obtain a loan of money, a credit card, a line of credit, or related guarantee, enhancement, or collateral of any kind or nature;

(C) Acts for or on behalf of a loan broker for the purpose of soliciting borrowers; or

(D) Holds himself out as a loan broker.

"Loan broker" does not include any regulated lender or any third party soliciting borrowers for a regulated lender pursuant to a written contract with the regulated lender or any mortgage banker or mortgage broker approved by a regulated lender or the federal Department of Housing and Urban Development, the Veterans' Administration, the Federal National Mortgage Corporation, or the Federal Home Loan Mortgage Corporation.

(4) "Mortgage" means any indebtedness secured by a mortgage, deed of trust, security deed, or other lien on real property.

(5) "Mortgage banker" means any person who in the regular course of business:

- (A) Holds himself out as being able to make mortgage loans;
- (B) Holds himself out as being able to service mortgage loans; or
- (C) Holds himself out as being able to buy or sell mortgage loans.

(6) "Mortgage broker" means any person who in the regular course of business for compensation or gain or in the expectation of compensation or gain holds himself out as being able to assist a person in obtaining a mortgage loan.

(7) "Principal" means any officer, director, partner, joint venturer, branch manager, or other person with similar managerial or supervisory responsibilities for a loan broker.

(8) "Regulated lender" means any person, firm, corporation, or subsidiary thereof that is licensed by and subject to regulation or supervision of any agency of the United States or this state and is acting within the scope of the license.

(Code 1981, 7-7-1, enacted by Ga. L. 1992, p. 1123, 1.)

7-7-2. Prohibited practices by loan brokers.

No loan broker shall:

(1) Engage in unfair or deceptive acts or practices that are declared to be unlawful by Part 2 of Article 15 of [Chapter 1](#) of [Title 10](#), the "Fair Business Practices Act of 1975";

(2) Assess, collect, or solicit an advance fee from a borrower to provide services as a loan broker; provided, however, that nothing contained in this paragraph shall preclude a loan broker from soliciting a potential borrower to pay for or preclude a potential borrower from paying for actual services necessary to apply for a loan, including but not limited to a credit check or an appraisal of security where such payment is made by check or money order payable to a party independent of the loan broker;

(3) Make or use any false or misleading representations or omit any material fact in the offer or sale of the services of a loan broker or engage, directly or indirectly, in any act that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a loan broker, notwithstanding the absence of reliance by the buyer;

(4) Make or use any false or deceptive representation in its business dealings or to the department or conceal a material fact from the department; or

(5) Offer the services of a loan broker by making, publishing, disseminating, circulating, or placing before the public within this state an advertisement in a newspaper or other publication or an advertisement in the form of a book, notice, handbill, poster, sign, billboard, bill, circular, pamphlet, letter, photograph, or motion picture or an advertisement circulated by radio, loud-speaker, telephone, television, telegraph, or in any other way, where said offer or advertisement does not disclose the name, business address, and telephone number of the loan broker. For purposes of this Code section, the loan broker shall disclose the actual address and telephone number of the business of the loan broker in addition to the address and telephone number of any forwarding service that the loan broker may use.

(Code 1981, 7-7-2, enacted by Ga. L. 1992, p. 1123, 1.)

7-7-3. Liability of principals.

Each principal of a loan broker may be sanctioned for the actions of the loan broker, including its agents or employees, in the course of business of the loan broker.

(Code 1981, 7-7-3, enacted by Ga. L. 1992, p. 1123, 1.)

7-7-4. Borrower's remedies for violation of chapter.

(a) Any borrower injured by a violation of this chapter may bring civil action in a court of competent jurisdiction for recovery of damages. Judgment shall be entered for actual damages and in no case shall be less than the amount paid by the borrower to the loan broker, plus reasonable attorney's fees and costs. An award may also be entered for punitive damages.

(b) Any borrower injured by a violation of this chapter may bring an action against the surety bond or trust account, if any, of the loan broker.

(c) The remedies provided under this chapter are in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

(Code 1981, 7-7-4, enacted by Ga. L. 1992, p. 1123, 1.)

7-7-5. Operation of chapter not limitable by contract or agreement.

A loan broker may not by contract, agreement, or otherwise limit the operation of this chapter, notwithstanding any other provision of law.

(Code 1981, 7-7-5, enacted by Ga. L. 1992, p. 1123, 1.)

7-7-6. Penalties.

Any person who violates any provision of this chapter shall be guilty of a felony and upon conviction shall be subject to a fine not to exceed \$5,000.00 or by imprisonment for not less than one nor more than five years, or both.

(Code 1981, 7-7-6, enacted by Ga. L. 1992, p. 1123, 1.)